

1 MORGAN, LEWIS & BOCKIUS LLP
MICHAEL W. STEINBERG, *Pro Hac Vice*
2 1111 Pennsylvania Avenue, NW
Washington, DC 20004
3 Tel: 202.739.3000
Fax: 202.739.3001
4 E-mail: msteinberg@morganlewis.com

5 *Attorney for Intervenors Superfund Settlements*
Project, RCRA Corrective Action Project, and
6 *American Petroleum Institute*

7 MORGAN, LEWIS & BOCKIUS LLP
BENJAMIN P. SMITH, State Bar No. 197551
8 One Market, Spear Street Tower
San Francisco, CA 94105
9 Tel: 415.442.1000
Fax: 415.442.1001
10 E-mail: bsmith@morganlewis.com

11 *Local Co-Counsel for Intervenors*

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 SIERRA CLUB, GREAT BASIN RESOURCE
WATCH, AMIGOS BRAVOS, and IDAHO
16 CONSERVATION LEAGUE,

17 Plaintiffs,

18 vs.

19 STEPHEN JOHNSON, Administrator, United
States Environmental Protection Agency, and
20 MARY E. PETERS, Secretary, United States
Department of Transportation,
21

22 Defendants.

Case No. C-08-01409-WHA

Hon. William H. Alsup

**INTERVENORS SUPERFUND
SETTLEMENTS PROJECT, RCRA
CORRECTIVE ACTION PROJECT,
AND AMERICAN PETROLEUM
INSTITUTE'S ANSWER TO
PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

23
24 Intervenors Superfund Settlements Project, RCRA Corrective Action Project, and
25 American Petroleum Institute (collectively, "Intervenors") by and through their undersigned
26 counsel, pursuant to the May 22, 2008 Order Granting Applicant's Motion to Intervene,¹ answer
27 the numbered paragraphs of the Complaint for Declaratory and Injunctive Relief ("Complaint")

28 ¹ This answer supercedes Intervenors' previous proposed answer submitted with the Motion to Intervene.

1 of Plaintiffs Sierra Club, Great Basin Resource Watch, Amigos Bravos, and Idaho Conservation
2 League (collectively, "Plaintiffs") as follows:

3 INTRODUCTION

4 1. To the extent that Plaintiffs purport to bring a civil action pursuant to the
5 Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and the
6 Administrative Procedure Act ("APA"), no response is required. The remaining allegations in
7 this paragraph constitute legal conclusions to which no response is required, and therefore they
8 are deemed to be denied.

9 2. The first sentence constitutes a legal conclusion to which no response is required,
10 and therefore is deemed to be denied. Intervenor's lack knowledge or information sufficient to
11 form a belief as to the truth of the remaining allegations in this paragraph, and therefore such
12 allegations are deemed to be denied.

13 JURISDICTION

14 3. The allegations in this paragraph constitute legal conclusions to which no response
15 is required, and therefore are deemed to be denied.

16 4. Plaintiffs' assertion that venue lies in this Court is a legal conclusion to which no
17 response is necessary, and therefore the assertion is deemed to be denied.

18 5. Intervenor's lack knowledge or information sufficient to form a belief as to the
19 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

20 PARTIES

21 6. Intervenor's lack knowledge or information sufficient to form a belief as to the
22 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

23 7. Intervenor's lack knowledge or information sufficient to form a belief as to the
24 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

25 8. Intervenor's lack knowledge or information sufficient to form a belief as to the
26 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

27 9. Intervenor's lack knowledge or information sufficient to form a belief as to the
28 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

10. Plaintiffs' statement regarding the purpose of CERCLA is a legal conclusion to which no response is required, and therefore is deemed to be denied. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore such allegations are deemed to be denied.

11. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

12. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

13. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

14. Intervenor admit that Stephen Johnson is the Administrator of the United States Environmental Protection Agency. The remaining allegations in this paragraph constitute legal conclusions to which no response is required, and therefore they are deemed to be denied.

15. Intervenor admit that Mary E. Peters is the Secretary of the Department of Transportation. The remaining allegations in this paragraph constitute legal conclusions to which no response is required, and therefore they are deemed to be denied.

STATUTORY BACKGROUND

16. The allegations in this paragraph constitute legal conclusions to which no response is required, and therefore are deemed to be denied.

17. To the extent that Plaintiffs purport to quote the text of 42 U.S.C. § 9608(b)(1), Intervenor maintain that the statute speaks for itself, and thus no response is required. The remaining allegations in this paragraph constitute legal conclusions to which no response is required, and therefore they are deemed to be denied.

18. To the extent that Plaintiffs purport to quote the text of 42 U.S.C. § 9608(b)(3), Intervenor maintain that the statute speaks for itself, and thus no response is required.

19. Executive Order No. 12,580 speaks for itself, and thus no response is required.

20. Executive Order No. 12,580 speaks for itself, and thus no response is required.

21. The allegations in this paragraph constitute legal conclusions to which no response

1 is required, and therefore are deemed to be denied. Intervenor maintain that CERCLA
2 § 108(b)(1) speaks for itself.

3 **I. THE LACK OF FINANCIAL ASSURANCE REGULATIONS INCREASES THE**
4 **RISK OF HARM TO PEOPLE AND THE ENVIRONMENT FROM**
5 **IMPROPERLY DISPOSED HAZARDOUS SUBSTANCES.**

6 22. Intervenor lack knowledge or information sufficient to form a belief as to the
7 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

8 23. Intervenor lack knowledge or information sufficient to form a belief as to the
9 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

10 24. Intervenor deny the allegations in this paragraph.

11 25. Intervenor lack knowledge or information sufficient to form a belief as to the
12 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

13 26. Intervenor deny the allegations in the second sentence of this paragraph.
14 Intervenor lack knowledge or information sufficient to form a belief as to the truth of the
15 remaining allegations in this paragraph, and therefore such allegations are deemed to be denied.

16 27. Intervenor admit that the tax on crude oil and certain chemicals and the tax on
17 corporations that provided funding to Superfund expired in 1995. The remaining allegations in
18 this paragraph constitute legal conclusions to which no response is required, and therefore they
19 are deemed to be denied.

20 28. Intervenor lack knowledge or information sufficient to form a belief as to the
21 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

22 29. Intervenor lack knowledge or information sufficient to form a belief as to the
23 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

24 30. Intervenor admit that the EPA Office of Inspector General ("OIG") issued a
25 report titled "Congressional Request on Funding Needs for Non-Federal Superfund Sites" on
26 January 7, 2004 ("OIG Report"). To the extent that Plaintiffs purport to quote the text of the OIG
27 Report, Intervenor maintain that the OIG Report speaks for itself, and thus no response is
28 required.

1 31. To the extent that Plaintiffs purport to quote the text of the OIG Report,
2 Intervenor maintain that the OIG Report speaks for itself, and thus no response is required.

3 32. To the extent that Plaintiffs purport to quote the text of the OIG Report,
4 Intervenor maintain that the OIG Report speaks for itself, and thus no response is required. The
5 remaining allegations in this paragraph constitute legal conclusions to which no response is
6 required, and therefore they are deemed to be denied.

7 33. The first sentence of this paragraph constitutes a legal conclusion to which no
8 response is required, and is therefore deemed to be denied. Intervenor lack knowledge or
9 information sufficient to form a belief as to the truth of the allegations in the second sentence of
10 this paragraph, and therefore such allegations are deemed to be denied.

11 34. Intervenor lack knowledge or information sufficient to form a belief as to the
12 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

13 35. Intervenor lack knowledge or information sufficient to form a belief as to the
14 truth of the allegations in this paragraph, and therefore such allegations are deemed to be denied.

15 36. Intervenor deny the allegations in the second sentence of this paragraph. The
16 allegations in the first sentence of this paragraph constitute legal conclusions to which no
17 response is required, and therefore they are deemed to be denied.

18 **CAUSES OF ACTION**

19 **FIRST CLAIM FOR RELIEF**
20 **VIOLATION OF 42 U.S.C. § 9608(B)(1)**

21 37. The allegations in this paragraph constitute legal conclusions to which no response
22 is required, and therefore they are deemed to be denied.

23 38. The allegations in this paragraph constitute legal conclusions to which no response
24 is required, and therefore they are deemed to be denied. To the extent any response is required,
25 Intervenor deny this paragraph.

26 39. The allegations in this paragraph constitute legal conclusions to which no response
27 is required, and therefore they are deemed to be denied. To the extent any response is required,
28 Intervenor deny this paragraph.

**SECOND CLAIM FOR RELIEF
VIOLATION OF 5 U.S.C. § 706**

40. The allegations in this paragraph constitute legal conclusions to which no response is required, and therefore they are deemed to be denied.

41. The allegations in this paragraph constitute legal conclusions to which no response is required, and therefore they are deemed to be denied.

RELIEF REQUESTED

Intervenors hereby incorporate by reference their responses to paragraphs 1 through 41 above. The Relief Requested constitutes legal conclusions to which no response is required. To the extent any response is required, Intervenors deny that Plaintiffs are entitled to any relief against Defendants Stephen Johnson and Mary E. Peters (collectively, "Defendants").

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Intervenors incorporate their answers to the Complaint in paragraphs 1 through 41 above.

SECOND DEFENSE

The Court lacks jurisdiction over the subject matter of the Complaint.

THIRD DEFENSE

The Complaint fails to state a claim against Defendants upon which relief can be granted.

FOURTH DEFENSE

Plaintiffs' Complaint and requested relief are barred by the applicable statutes of limitations, laches, estoppel, waiver or other equitable defenses.

FIFTH DEFENSE

Plaintiffs' claims are barred for lack of standing.

SIXTH DEFENSE

Plaintiffs' claims are barred for improper venue.

///

///

///

1 Dated: 05/23/08

Respectfully submitted,

3 /s/ Michael W. Steinberg

4 MICHAEL W. STEINBERG, *Pro Hac Vice*
5 MORGAN, LEWIS & BOCKIUS LLP
6 1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Telephone: (202) 739-5141
Facsimile: (202) 739-3001

7 *Attorney for Intervenors Superfund Settlements*
8 *Project, RCRA Corrective Action Project, and*
American Petroleum Institute

9 BENJAMIN P. SMITH, State Bar No. 197551
10 MORGAN, LEWIS & BOCKIUS LLP
11 One Market, Spear Street Tower
San Francisco, CA 94105
Tel: 415.442.1000
Fax: 415.442.1001
E-mail: bsmith@morganlewis.com

12 *Local Co-Counsel for Intervenors Superfund*
13 *Settlements Project, RCRA Corrective Action Project,*
14 *and American Petroleum Institute*

PROOF OF SERVICE
UNITED STATES DISTRICT COURT – NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB, et al. vs. STEPHEN JOHNSON, et al.
Case No. C-08-01409-WHA

I, the undersigned, declare: that I am, and was at the time of service of the documents herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Francisco, California. My business address is One Market, Spear Street Tower, San Francisco, California 94105-1126.

On May 23, 2008, I cause the below listed document(s) to be filed using Electronic Case Filing:

INTERVENORS SUPERFUND SETTLEMENTS PROJECT, RCRA CORRECTIVE ACTION PROJECT, AND AMERICAN PETROLEUM INSTITUTE'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I declare under penalty of perjury pursuant to the laws of the United States of America and the State of California that the foregoing is true and correct and was executed on May 23, 2008, at San Francisco, California.

/s/ Paula Lesure

Paula Lesure
Assistant to Laura Alexis Lee, SB 246032
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Tower
San Francisco, CA 94105
Tel: 415/442-1000
Fax: 415/442-1001